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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 12th December 2014

No. 10160—IR(ID)-28/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th November 2014 in Industrial Dispute Case No. 27/2013 of the Presiding Officer, Labour Court, Bhubaneswar, to whom the industrial dispute between the Management of Divisional Forest Officer, Khurda Division, Khurda, Dist. Khurda and its Workman Shri Naba Kishore Swain was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 27/2013

Dated the 11th November, 2014

Present:

Shri Saroj Kumar Sahoo, O.S.J.S.(Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between:

The Management of Divisional Officer, .. First Party—Management
Khurda Division, Khurda, Dist. Khurda.

And

Their Workman, Shri Naba .. Second Party—Workman
Kishore Swain, S/o Damodar
Swain,
At/PO/P.S. Chandaka,
Via Baranga, Dist. Khurda.

Appearances:

Shri Laxmikanta Choudhury, Adv.	..	For the First Party—Management
Shri S. Das, Advocate	..	For the Second Party—Workman

AWARD

The Government of Odisha in Labour & E. S. I. Department in exercise of the powers conferred upon it by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') have referred the following dispute for adjudication by this Court Vide their Letter No. 4837—IR(ID)—28/2010, dated the 20th May 2013:—

"Whether the termination of services of Shri Naba Kishore Swain, Bungalow Choukidar by the management of Divisional Forest Officer, Khurda with effect from the 16th March 1986 is legal and / or justified, If not what relief Shri Swain is entitled to?"

2. The case of second party workman is that he had been working as Bungalow Choukidar continuously for the period the 20th December 1982 to 15th March 1986. He has completed more than 240 days continuous employment in a 12 Calendar Month. On the 16th March 1986, the services of the second party workman was terminated without compliance of Section 25-F(a)(b), 25-G and 25-H of the I. D. Act, 1947. The reason of termination of employment was not communicated to the workman. At the time of termination, the second party workman was paid regular pay in the Pay Scale of Clause-IV employee as admissible from time to time. The second party was a 'workman' under section 2(s) and the establishment of the first party organisation is an 'Industry' as per Section 2(j) of the Industrial Disputes Act, 1947. After termination of services of the second party with effect from the 16th March 1986, he had submitted his representation on the 18th June 1986 for restoration of his employment but in vain. After termination of the second party, the said post has been filled up by the management by appointing a new person. At the time of the termination of the service of the second party, 12 to 20 persons of NMRs/DLRs/*Ad hoc* Employees services has been regularised by the first party. The second party workman had raised an Labour dispute before the Assistant Labour Officer-cum-Conciliation Officer, Puri, who has submitted failure report under section 12 of the I.D. Act., to the Government and thereafter, the present reference to this Court for proper adjudication of the Industrial Dispute.

3. In pursuance of notice, the first party management filed its written statement. The case of the first party management is that Naba Kishore Swain, the second party workman was appointed temporarily as Bungalow Choukidar in place of Shri Harihar Naik, absconded on stop gap arrangement vide Office order No.616, dated the 20th December 1982. He served under the first party management till the 15th March 1985 with intermittent break in between. The appointment of the second party was purely temporary and terminable at any time without assigning any reason thereof. He was appointed vide Office Order No.616, dated the 20th December 1982 and terminated vide Office Order No.127, dated the 22nd March 1983, vide Office Order No.154, dated the 7th April 1983, again he was appointed and terminated vide Office Order No.288, dated the 5th July 1983. Likely he was appointed in the post of Bungalow Choukidar vide Office Order No.411, dated the 18th August 1983, No.529, dated the 19th October 1983, No.65, dated the 23rd January 1984, No.202, dated the 23rd April 1984 and No.581, dated the 29th November 1984. He was terminated vide Office Order No.503, dated the 4th October 1983, No.46, dated the 16th January 1984, No.193, dated the 21st April 1984, No.335, dated the 16th July 1984 and No.624, dated the 13th December 1984. As per the conditions of the appointment order the services of the second party workman was terminated after expiry of the time mentioned in the appointment letter issued to him. The organisation of the first party is not an 'Industry' and the second party is not a 'workman', as defined under the I. D. Act, 1947. The second party workman was appointed against the short term vacancy caused due to the absconding Bungalow Choukidar Shri Harihar Naik. He was never appointed

against any regular vacancy. The non-renewal of service of the second party workman is not retrenchment and he is not entitled to get the benefit of Section 25-F (a) (b), 25-G and 25-H of the Industrial Disputes Act, 1947. Unnecessarily, the second party workman is dragging the first party management, a Government Organisation to the present litigation. The petition filed by the second party workman has no merit which should be dismissed.

4. Taking into consideration the pleading of the parties, the following issues are framed:—

1. "Whether the termination of services of Shri Naba Kishore Swain, Bungalow Choukidar by the management of Divisional Forest Officer, Khurda Division, Khurda with effect from the 16th March 1986 is legal and/or justified?
2. If not, what relief Shri Swain is entitled to?"

5. The second party workman is examined as W.W.1 and filed some photo copies of Office orders of the first party management. The Assistant Conservator of forest of the first party management is examined as M.W.1. Exts. 1 to 45 are marked on behalf of first party management. Exts. 1 to 16 are office orders of the appointments and terminations of the second party workman. Exts. 17 to 44 are the Acquaintance Roll maintained by the first party management from December, 1982 to March, 1995. Ext.5 is Memo. No.1185, dated the 25th September 1986 of the Range Officer, Balugaon.

FINDINGS

4. *Issue Nos. 1 and 2*—For the sake of convenience and to avoid repetition, both the issues are taken up together. The case of the second party workman is that he was serving as Bungalow Choukidar continuously from the 20th December 1982 to 15th March 1986 under the first party management and completed more than 240 days of continuous employment in a 12 Calendar Month but the first party management has illegally terminated him from service. Admittedly, the second party workman has not filed any original documents nor produced any documentary evidence except photo copy of some office orders passed by the first party management. The first party management has produced all the office orders relating to the appointment and termination of the second party workman. In his evidence W.W.1 deposed that he served under the first party management from the 20th December 1982 to 15th March 1986. In its written statement, the first party management has mentioned that the second party workman was under the first party management up to the 15th March 1985 with intermittent break in between. Admittedly, the second party workman failed to produce any documentary evidence to show that he was employed by the first party management after the 15th March 1985. When the second party workman has filed the photo copies of all the office orders relating to his appointment and termination till the 3rd February 1985, there is no reason why he failed to produce the relevant document relating to his appointment by the first party organisation after the 15th March 1985. Admittedly, the onus is on the second party to prove that he has served for 240 days under the first party management within a period of 12 months prior to his termination. M.W.1 in his evidence deposed that lastly by Office Order No.625, dated the 13th December 1984, the second party was appointed as Bungalow Choukidar but after working for 58 days he remained absent. From the pleading of the first party management and also from the evidence of M.W.1, it is clear that the second party workman was appointed as Bungalow Choukidar against the absconding Bungalow Choukidar Shri Harihar Naik for a stop gap arrangement and subsequently, he was appointed in different spell at different point of time with break. The first party management has also produced the Acquaintance Roll for the period December, 1982 till

March, 1985. The office orders of appointments and terminations issued by the first party management are marked Exts. 1 to 16. The original Acquaintance Roll proved by M.W. 1 are marked Exts. 17 to 44. No doubt in some of the year of his employment, the second party workman has worked more than 240 days within a period of 12 months. However, on persual of the office orders relating to the appointment of the second party workman which are marked Exts. 1,3,5,7,9,11 and 15. It is clear that the second party workman was appointed temporarily as Bungalow Choukidar in place of Shri Harihar Naik, Bungalow Choukidar absconded for a period of three months or till short-term vacancy ceases to exist whichever is earlier, Cunningly, the second party workman has not mentioned in his claim statement that he was appointed temporarily against the absconded Bungalow Choukidar Shri Harihar Naik. In almost all the office orders relating to appointment of the second party workman it has been clearly mentioned that the second party was appointed temporarily against the absconded Bungalow Choukidar, Harihar Naik. It has also been clearly mentioned in the appointment order of the second party workman that his appointment is subject to the period of his employment or till the short term vacancy ceases to exist. However, in his affidavit evidence at Paragraph-3 W. W. 1 the second party workman has admitted that he was appointed in the vacant post of Shri Harihar Naik, Ex-Forest Guard who had absconded till the submission of the affidavit evidence in Court. From the office orders proved by the first party management it is clear that Harihar Naik is not a Forest Guard, he was engaged as Bungalow Choukidar. Ext.45 is the letter issued by the Forest Range Officer, Balugaon Range bearing Memo. No.1185 of the 25th September 1986 submitted to D. F. O., Puri Division, Khurda. In the said letter, he has informed the D. F. O. that Harihar Naik, the Bungalow Choukidar has joined in his duty on the 16th September 1986. From the aforesaid documents, it is clear that Harihar Naik has joined in his duty on the 16th September 1986 and he has not absconded till the filling of the affidavit evidence by the second party workman i.e. on the 21st May 2014.

7. The learned counsel for the second party workman relied on decision reported in 1996 W.L.C.(Raj.) U.C. 368 Chief Engineer, Irrigation Vrs. Kamalesh and others (2006) 144 P.L.R. 406 Dhani Ram Vrs. Presiding Officer, Labour Court-II and others, AIR 2010 Supreme Court 1236 Director, Fisheries, Terminal Division Vrs. Bhikubhai Meghajibhai Chavda and submitted that the first party management has not complied the provisions of Industrial Disputes Act, 1947 at the time of termination of services of the second party workman. No doubt the second party workman has worked for more than 240 days within a period of 12 months in a year under the first party management. Now it is to be seen whether the termination of services of the second party workman amounts to retrenchment. After analysing the ocular testimony of the parties and the documentary evidence proved by the first party management, it is clear that the second party workman was engaged for short period due to absconding of Harihar Naik, the then Bungalow Choukidar serving under the first party management. The second party workman was not appointed against any regular post available with the first party management. His appointment was purely temporary and for a specific period mentioned in the appointment order with the condition that his service will cease whenever the vacancy ceases to exist. As the absconding Bungalow Choukidar joined in his post the vacancy in which the second party was appointed ceased to exist. The position of law relating to fixed appointments and the scope and ambit of Section 2(oo)(bb) and Section 25-F were examined by the Apex Court in several cases. In the present case, the second party was appointed for a specific period in each time of appointment and he was terminated from the service by necessary order after expiry of that period. So, in this case the removal of the second party workman from his service by not renewing his appointment is coming under exception of the definition "retrenchment"

as defined under Section 2(oo) of the I. D. Act. The case of the second party workman is coming under the exception 2(oo) (bb) of the I. D. Act, 1947. For my aforesaid view, I have relied on the pronouncements of the Hon'ble Apex Court passed in Civil Appeal No.5458 of 2004 (November 17, 2005) Kishore Chandra Samal *Vrs.* The Divisional Manager, Odisha State Cashew Development Corporation Limited (S.C.L.J 2005-2006-P.854 and Civil Appeal No.7981 of 2004 October 7, 2005) Batla Co-operative Sugar Mills Limited *Vrs.* Sowaran Singh (S.C.L.J 2005-2006-846). So after going through the evidence on record along with the pronouncements of the Apex Court, it is clear that the non-renewal of the appointment of the second party workman by the first party organisation is not coming under the definition of retrenchment for which the first party management is not obliged to comply Section 25-F of the I. D. Act, 1947.

8. It is averred in the claim statement that a new person is appointed against the vacancy created by the termination of the second party workman. From Ext.45 it is crystal clear that Harihar Naik, who had absconded, has joined in his duty since the 16th September 1986. So, the plea of the second party workman that a new person has been appointed by the first party against the vacancy created by his termination is not correct. Although in his pleading, the second party workman has mentioned that the service of 12 of 20 numbers of NMRs/DLRs who were *ad hoc* employees were regularised by the first party, no such evidence is forthcoming from him. The W.W. 1 did not whisper about the appointment of a new person or regularisation of the service of some DLRs and NMRs by the first party management. It is also clear from the evidence on record that the first party management is not obliged to comply Sections 25-G and 25-H of the I. D. Act, 1947.

9. It is argued by the first party management that the second party is neither a workman nor the first party organisation is an Industry. In the decision of our Hon'ble High Court reported in 2008 (Supp-1) OLR 405 Project Director, IDCWD Project *Vrs.* Shri Kailash Chandra Jena it has been held "the appellant as Industry which is a department under Government of Odisha". Such a view was also taken by the Hon'ble Apex Court in its pronouncements reported in AIR 1996 Supreme Court 2898 Chief Conservator of Forest and another *Vrs.* Jagannath Maruti Kondhare etc., So it is clear that the second party was a workman and the first party organisation is an Industry, for which this Court has ample jurisdiction to decide the Industrial Dispute among the parties. In view of the evidence on record, it is clear that the termination of services of Shri Naba Kishore Swain, Bungalow Choukidar by the first party management i.e. D. F. O., Khurda Division is legal and justified. The second party workman is not entitled for any other relief.

10. The reference is disposed of on contest accordingly.

Dictated and corrected by me.

SHRI SAROJ KUMAR SAHOO
11-11-2014
Presiding Officer
Labour Court
Bhubaneswar

SHRI SAROJ KUMAR SAHOO
11-11-2014
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government